

Exhibit A

1 GREENSPOON MARDER LLP
2 BETH-ANN KRIMSKY (*pro hac vice admission*)
3 beth-ann.krimsky@gmlaw.com
4 LAWREN A. ZANN (*pro hac vice admission*)
5 lawren.zann@gmlaw.com
6 200 East Broward Blvd., Suite 1800
7 Fort Lauderdale, FL 33301
8 Telephone: 954.527.2427
9 Facsimile: 954.333.4027

10 NOSSAMAN LLP
11 JAMES H. VORHIS (SBN 245034)
12 jvorhis@nossaman.com
13 50 California Street, 34th Floor
14 San Francisco, CA 94111
15 Telephone: 415.398.3600
16 Facsimile: 415.398.2438

17 Attorneys for Defendant TOTAL MERCHANT SERVICES, INC.

18 UNITED STATES DISTRICT COURT

19 NORTHERN DISTRICT OF CALIFORNIA

20 ABANTE ROOTER AND PLUMBING, INC, a Case No: 3:19-cv-05711
21 California corporation, individually and on
22 behalf of all others similarly situated,

23 **DEFENDANT'S SUPPLEMENTAL
RESPONSES AND OBJECTIONS TO
PLAINTIFF'S FIRST SET OF
INTERROGATORIES**

24 Plaintiff,

25 vs.

26 TOTAL MERCHANT SERVICES, LLC., a
27 Delaware limited liability company,

28 Date Action Filed: September 11, 2019

Defendant.

29
30
31 Defendant, TOTAL MERCHANT SERVICES, LLC ("Defendant" or "TMS"), by and
32 through undersigned counsel, hereby serves its supplemental responses and objections to the First
33 Set of Interrogatories dated December 23, 2019, and served by Plaintiff, ABANTE ROOTER
34 AND PLUMBING, INC. ("Plaintiff"), and states as follows:

35 **PRELIMINARY STATEMENT**

36 The following supplemental responses and objections to the Interrogatories (the
37 "Responses") are made solely for the purpose of this action. TMS has not completed its

38 Case No. 3:19-cv-05711

DEFENDANT'S SUPPLEMENTAL RESPONSES & OBJECTIONS TO FIRST SET OF INTERROGATORIES

1 speculation. TMS further objects to the respective definitions of the terms “Describe” and “You”
2 as set forth more fully in General Objections B & D *supra*.

3

4 **INTERROGATORY NO. 3:** Identify and Describe the Dialing Equipment You (or any Person
5 acting on Your behalf or for Your benefit) used to place the calls at issue in the Complaint.

6 **SUPPLEMENTAL ANSWER:** Subject to and without waiving the following objections, TMS
7 did not place the alleged telephone calls to Plaintiff at issue in the Complaint. Plaintiff does not
8 allege but merely advises TMS of Plaintiff’s belief that a non-party named Triumph placed the
9 alleged telephone calls to Plaintiff at issue in the Complaint purportedly on behalf of TMS. As
10 such, TMS attempted to contact Triumph to seek to ascertain whether Triumph placed the alleged
11 telephone calls to Plaintiff at issue in the Complaint, and, if so, the facts, circumstances, and
12 documentation surrounding such alleged telephone calls. Triumph has not responded to TMS.
13 Accordingly, because TMS did not place the alleged calls at issue in the Complaint and because
14 the unalleged but supposed calling party, Triumph, has not responded to TMS, TMS not only lacks
15 information to believe Plaintiff was contacted on behalf of TMS as alleged in the Complaint, but
16 also disputes the assumptions and contentions set forth in this Interrogatory. TMS is unaware of
17 the “dialing equipment” purportedly used by Triumph to contact Plaintiff.

18 The objections that apply to this Interrogatory continue as follows:

19 TMS objects to this Interrogatory as argumentative to the extent the Interrogatory purports
20 to assume certain facts or otherwise poses mere allegations as fact. TMS further objects to this
21 Interrogatory to the extent it calls for a legal conclusion and speculation. TMS further objects to
22 the respective definitions of the terms “Describe,” “Dialing Equipment,” and “You” as set forth in
23 General Objections B, C & D, *supra*.

24

25

26

27

28

Case No. 3:19-cv-05711

DEFENDANT’S SUPPLEMENTAL RESPONSES & OBJECTIONS TO FIRST SET OF INTERROGATORIES

1 Interrogatory to the extent it seeks to intrude upon the attorney-client communications privilege
2 and the attorney work-product doctrine.

3

4 **INTERROGATORY NO. 7:** Identify each and every cellphone numbers to which You placed a
5 call (or to which a telemarketing call was placed on Your behalf or for Your benefit) using the
6 same Dialing Equipment that was used to call Plaintiff, for the same purpose Plaintiff was called,
7 where You obtained the phone number called and consent to call in the same manner as You
8 obtained Plaintiff's phone number and consent to call the Plaintiff.

9 **SUPPLEMENTAL ANSWER:** Subject to and without waiving the following objections, TMS
10 did not place the alleged telephone calls to Plaintiff at issue in the Complaint. Accordingly, there
11 are no cellphone numbers to identify as requested by this Interrogatory. Notwithstanding the
12 foregoing, Plaintiff does not allege but merely advises TMS of Plaintiff's belief that a non-party
13 named Triumph placed the alleged telephone calls to Plaintiff at issue in the Complaint purportedly
14 on behalf of TMS. As such, TMS attempted to contact Triumph to seek to ascertain whether
15 Triumph placed the alleged telephone calls to Plaintiff at issue in the Complaint, and, if so, the
16 facts, circumstances, and documentation surrounding such alleged telephone calls, including the
17 "dialing equipment" associated with such alleged telephone calls. Triumph has not responded to
18 TMS.

19 The objections that apply to this Interrogatory continue as follows:

20 TMS objects to this Interrogatory as argumentative to the extent the Interrogatory purports
21 to assume certain facts or otherwise poses mere allegations as fact. TMS further objects to this
22 Interrogatory and its inclusion of "each and every" as overly broad and unduly burdensome on its
23 face. TMS further objects to this Interrogatory to the extent it calls for a legal conclusion and
24 speculation. TMS further objects to the respective definitions of the terms "Dialing Equipment"
25 and "You" as set forth more fully in General Objections C & D, *supra*.

26

27

28

Case No. 3:19-cv-05711

DEFENDANT'S SUPPLEMENTAL RESPONSES & OBJECTIONS TO FIRST SET OF INTERROGATORIES

1 **INTERROGATORY NO. 8:** For each phone number identified in response to Interrogatory No.
2 7, Identify the total number of instances each number was called by You (or by a third-party on
3 Your behalf or for Your benefit) during the relevant time period and the date and times of each
4 such call.

5 **SUPPLEMENTAL ANSWER:** Subject to and without waiving the following objections, TMS
6 did not identify any phone number in response to Interrogatory No. 7. Accordingly, TMS is not
7 in possession of responsive information sought by this Interrogatory at this time.

8 The objections that apply to this Interrogatory continue as follows:

9 TMS objects to the definition of the term “You” as set forth more fully in General Objection
10 C, *supra*. TMS further objects to this Interrogatory to the extent it calls for a legal conclusion and
11 speculation. TMS further objects to the term “relevant time period” as set forth more fully in
12 General Objection F, *supra*.

13

14 **INTERROGATORY NO. 9:** Identify and Describe Your complete business relationship with
15 Triumph Merchant Solutions, including all contracts and communications regarding the
16 performance of such contracts.

17 **SUPPLEMENTAL ANSWER:** Subject to and without waiving the following objections, TMS
18 and Triumph entered into a non-exclusive relationship whereby Triumph sought to submit
19 applications on behalf of certain merchants to TMS for inclusion into card processing services and
20 programs offered by TMS. Pursuant to Fed. R. Civ. P. 33(d), TMS will produce copies of any
21 contract between TMS and Triumph that TMS possesses.

22 The objections that apply to this Interrogatory continue as follows:

23 TMS further objects to this Interrogatory and its inclusion of “complete” and “all” as overly
24 broad and unduly burdensome on its face. TMS further objects to the definition of the term
25 “Describe” as set forth more fully in General Objections B, *supra*.

26

27

28

Case No. 3:19-cv-05711

DEFENDANT'S SUPPLEMENTAL RESPONSES & OBJECTIONS TO FIRST SET OF INTERROGATORIES

1 **INTERROGATORY NO. 10:** Identify all third-parties who have placed telemarketing calls to
 2 Plaintiff on Your behalf or for Your benefit during the relevant time period.

3 **SUPPLEMENTAL ANSWER:** Subject to and without waiving the following objections, and
 4 based on the allegations contained in the Complaint, the respective Rule 26(a)(1) Initial
 5 Disclosures served in this action, as well as communications and information shared between
 6 counsel for Plaintiff and counsel for TMS, TMS identifies Quality Merchant Services, Inc. and
 7 Triumph as third-parties who may have placed telemarketing calls to Plaintiff. Any calls that may
 8 have been placed by Quality Merchant Services, Inc. are, by the express allegations set forth in the
 9 Complaint, not relevant to this action.

10 The objections that apply to this Interrogatory continue as follows:

11 TMS objects to this Interrogatory as argumentative to the extent the Interrogatory purports
 12 to assume certain facts or otherwise poses mere allegations as fact. TMS further objects to this
 13 Interrogatory to the extent it calls for a legal conclusion and speculation. TMS further objects to
 14 the term “relevant time period” as set forth more fully in General Objection F, *supra*.

15

16 **INTERROGATORY NO. 11:** Identify all third-parties who, on Your behalf or for your benefit
 17 during the relevant time period, obtained consent from Plaintiff to place autodialed or pre-recorded
 18 calls.

19 **SUPPLEMENTAL ANSWER:** Subject to and without waiving the following objections,
 20 Plaintiff does not allege but merely advises TMS of Plaintiff’s belief that a non-party named
 21 Triumph placed the alleged telephone calls to Plaintiff at issue in the Complaint purportedly on
 22 behalf of TMS. As such, TMS attempted to contact Triumph to seek to ascertain whether Triumph
 23 placed the alleged telephone calls to Plaintiff at issue in the Complaint, and, if so, the facts,
 24 circumstances, and documentation surrounding such alleged telephone calls, including the issue
 25 of “consent,” if applicable. Triumph has not responded to TMS. Notwithstanding the foregoing,
 26 to the extent Plaintiff can show Triumph actually contacted Plaintiff on behalf of TMS using an
 27

28

Case No. 3:19-cv-05711

DEFENDANT’S SUPPLEMENTAL RESPONSES & OBJECTIONS TO FIRST SET OF INTERROGATORIES

1 automatic telephone dialing system or an artificial or prerecorded voice, such contact would have
2 been pursuant to Plaintiff's consent as required by the agreement between TMS and Triumph.

3 The objections that apply to this Interrogatory continue as follows:

4 TMS objects to this Interrogatory as argumentative to the extent the Interrogatory purports
5 to assume certain facts or otherwise poses mere allegations as fact. TMS further objects to this
6 Interrogatory to the extent it calls for a legal conclusion and speculation.

7
8 **INTERROGATORY NO. 12:** For each third-party or parties Identified in response to
9 Interrogatory Nos. 10 and 11, Identify and describe Your complete business relationship with each
10 third-party, including all contracts and communications regarding the performance of such
11 contracts.

12 **SUPPLEMENTAL ANSWER:** Subject to and without waiving the following objections, TMS
13 directs Plaintiff to Supplemental Answer No. 9.

14 The objections that apply to this Interrogatory continue as follows:

15 TMS objects to this Interrogatory as irrelevant and overly broad in that it is not limited in
16 scope, particularly, where, as here, TMS's relationship with QMS is, by the express allegations set
17 forth in the Complaint, not relevant to this action. TMS further objects to this Interrogatory and
18 its inclusion of "complete" as overly broad and unduly burdensome on its face. TMS further
19 objects to this Interrogatory to the extent it calls for a legal conclusion and speculation.

20
21 **INTERROGATORY NO. 13:** Identify and Describe any and all steps You (or someone acting
22 on Your behalf, for Your benefit, in accordance with any contract or other arrangement with You,
23 or with Your knowledge and prior or subsequent approval) have caused to subscribe to the National
24 DNC List, to scrub any call list against the National DNC List, or to take any other action to
25 incorporate the national DNC list into Your call procedures.

26 **SUPPLEMENTAL ANSWER:** Subject to and without waiving the following objections, TMS
27 does not place telemarketing calls or telephone solicitations as assumed by this Interrogatory.

1 **SUPPLEMENTAL ANSWER:** Subject to and without waiving the following objections, TMS
 2 does not place telemarketing calls as assumed by this Interrogatory. Notwithstanding the
 3 foregoing, Plaintiff does not allege but merely advises TMS of Plaintiff's belief that a non-party
 4 named Triumph placed the alleged telephone calls to Plaintiff at issue in the Complaint purportedly
 5 on behalf of TMS. As such, TMS attempted to contact Triumph to seek to ascertain whether
 6 Triumph placed the alleged telephone calls to Plaintiff at issue in the Complaint, and, if so, the
 7 facts, circumstances, and documentation surrounding such alleged telephone calls, including its
 8 use of "Internal Do Not Call Lists." Triumph has not responded to TMS.

9 The objections that apply to this Interrogatory continue as follows:

10 TMS objects to this Interrogatory as argumentative to the extent the Interrogatory purports
 11 to assume certain facts or otherwise poses mere allegations as fact. TMS further objects to this
 12 Interrogatory as irrelevant and overbroad in that it is not limited in scope. Specifically, Plaintiff
 13 contends a non-party named Triumph, and not TMS, placed the telephone calls to Plaintiff at issue
 14 in the Complaint. Thus, the policies of TMS as it relates to "Internal Do Not Call Lists" are not
 15 relevant for purposes of this action. To the extent TMS responds to this Interrogatory, TMS will
 16 only provide information concerning the purported, but unalleged, activity of Triumph. TMS
 17 further objects to this Interrogatory and its inclusion of "any and all" as overly broad and unduly
 18 burdensome on its face. TMS further objects to the respective definitions of the terms "Describe"
 19 and "You" as set forth more fully in General Objections B & C, *supra*. TMS further objects to this
 20 Interrogatory to the extent it seeks to intrude upon the attorney-client communications privilege
 21 and the attorney work-product doctrine.

22
 23 **INTERROGATORY NO. 15:** Identify all persons who You (or who were called by a third-party
 24 on Your behalf or for Your benefit) caused to be called at least twice during any 12-month period
 25 where the person's phone number had been on the National DNC List for at least thirty (30) days
 26 including the dates and times, and total number, of all such calls.

27
 28 Case No. 3:19-cv-05711
 DEFENDANT'S SUPPLEMENTAL RESPONSES & OBJECTIONS TO FIRST SET OF INTERROGATORIES

1 **SUPPLEMENTAL ANSWER:** Subject to and without waiving the following objections, TMS
 2 does not place telemarketing calls as assumed by this Interrogatory. Notwithstanding the
 3 foregoing, Plaintiff does not allege but merely advises TMS of Plaintiff's belief that a non-party
 4 named Triumph placed the alleged telephone calls to Plaintiff at issue in the Complaint purportedly
 5 on behalf of TMS. As such, TMS contacted Triumph in an attempt to ascertain whether Triumph
 6 placed the alleged telephone calls to Plaintiff at issue in the Complaint, and, if so, the facts and
 7 circumstances surrounding such alleged telephone calls, including Triumph's calling records.
 8 Triumph has not responded to TMS.

9 The objections that apply to this Interrogatory continue as follows:

10 TMS objects to the misstatement of the law contained in this Interrogatory concerning the
 11 time period in which a telephone number must receive two calls in relation to the placement of
 12 such telephone number on any national do not call database. For this same reason, TMS further
 13 objects to this Interrogatory as irrelevant and not proportional to the needs of the case. TMS further
 14 objects to this Interrogatory as irrelevant, not proportional to the needs of the case, overbroad, and
 15 unduly burdensome in that it is not limited in scope. To the extent TMS responds to this
 16 Interrogatory, TMS will only provide information concerning the purported, but unalleged, activity
 17 of Triumph. TMS further objects to this Interrogatory to the extent it seeks to compel TMS to
 18 conduct an analysis of the calling activity of Triumph necessary for Plaintiff to establish its claims.
 19 Indeed, Plaintiff carries the burden to conduct such an analysis, through expert testimony or
 20 otherwise, sought by this Interrogatory and, as such, TMS will not conduct such analysis sought
 21 by this Interrogatory should TMS receive relevant information requested from Triumph. TMS
 22 will, however, produce to Plaintiff relevant documents TMS seeks to obtain from Triumph—if any
 23 are provided by Triumph to TMS—such that Plaintiff can carry its own burden of proof and
 24 conduct its own analysis. TMS further objects to this Interrogatory to the extent it calls for a legal
 25 conclusion and speculation. TMS further objects to the definition of the term “You” as set forth
 26 more fully in General Objection D, *supra*.

27

28

Case No. 3:19-cv-05711

DEFENDANT'S SUPPLEMENTAL RESPONSES & OBJECTIONS TO FIRST SET OF INTERROGATORIES

1 **INTERROGATORY NO. 16:** Identify all persons who You (or anyone acting on Your behalf
 2 or for Your benefit) caused to be called on at least once occasion more than thirty (30) days after
 3 You placed the person's number on Your Internal Do Not Call List, including the dates and times
 4 of all calls to all such persons.

5 **SUPPLEMENTAL ANSWER:** Subject to and without waiving the following objections, TMS
 6 does not place telemarketing calls as assumed by this Interrogatory. Notwithstanding the
 7 foregoing, Plaintiff does not allege but merely advises TMS of Plaintiff's belief that a non-party
 8 named Triumph placed the alleged telephone calls to Plaintiff at issue in the Complaint purportedly
 9 on behalf of TMS. As such, TMS attempted to contact Triumph to seek to ascertain whether
 10 Triumph placed the alleged telephone calls to Plaintiff at issue in the Complaint, and, if so, the
 11 facts, circumstances, and documentation surrounding such alleged telephone calls. Triumph has
 12 not responded to TMS.

13 The objections that apply to this Interrogatory continue as follows:

14 TMS objects to this Interrogatory as irrelevant and overbroad in that it is not limited in
 15 scope. Specifically, Plaintiff contends a non-party named Triumph, and not TMS, placed the
 16 telephone calls to Plaintiff at issue in the Complaint. Thus, the policies of TMS as it relates to
 17 "Internal Do Not Call Lists" are not relevant for purposes of this action. To the extent TMS
 18 responds to this Interrogatory, TMS will only provide information concerning the purported, but
 19 unalleged, activity of Triumph. TMS further objects to this Interrogatory to the extent it seeks to
 20 compel TMS to conduct any analysis of the calling activity of Triumph necessary for Plaintiff to
 21 establish its claims. Indeed, Plaintiff carries the burden to conduct the analysis, through expert
 22 testimony or otherwise, sought by this Interrogatory and, as such, TMS will not conduct such
 23 analysis sought by this Interrogatory should TMS receive relevant information requested from
 24 Triumph. TMS will, however, produce to Plaintiff relevant documents TMS seeks to obtain from
 25 Triumph—if any are provided by Triumph to TMS—such that Plaintiff can carry its own burden
 26 of proof and conduct its own analysis. TMS further objects to this Interrogatory to the extent it

27

28

Case No. 3:19-cv-05711

DEFENDANT'S SUPPLEMENTAL RESPONSES & OBJECTIONS TO FIRST SET OF INTERROGATORIES

1 calls for a legal conclusion and speculation. TMS further objects to the definition of the term
2 “You” as set forth more fully in General Objection D, *supra*.

3 Date: March 30, 2020

4 GREENSPOON MARDER LLP
5 LAWREN A. ZANN

6 By:/s/ Lawren A. Zann
7 Lawren A. Zann

8 Attorneys for Defendant TOTAL
9 MERCHANT SERVICES, LLC

10 **CERTIFICATE OF SERVICE**

11 I HEREBY CERTIFY that on March 30, 2020, I served the foregoing Supplemental
12 Response and Objections to Plaintiff's First Set of Interrogatories on all parties of record via
13 electronic mail.

14 /s/ Lawren A. Zann
15 Lawren A. Zann